

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 621

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10 46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

11 AN ACT

12 RELATING TO TAXATION; ENACTING THE OIL AND GAS PROCEEDS
13 WITHHOLDING TAX ACT; REQUIRING WITHHOLDING FROM PAYMENTS OF OIL
14 AND GAS PROCEEDS TO NONRESIDENTS AND CERTAIN OTHER PERSONS;
15 MAKING A DISTRIBUTION TO THE LEGISLATIVE RETIREMENT FUND.

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. A new section of the Tax Administration Act is
18 enacted to read:

19 "[NEW MATERIAL] DISTRIBUTION TO LEGISLATIVE RETIREMENT
20 FUND. --

21 A. A distribution pursuant to Section 7-1-6.1 NMSA
22 1978 shall be made to the legislative retirement fund in an
23 amount equal to two hundred thousand dollars (\$200,000) or, if
24 larger, one-twelfth of the amount necessary to pay out the
25 retirement benefits due under state legislator member coverage

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1 plan 2 and Paragraph (2) of Subsection C of Section 10-11-42
2 NMSA 1978 for the calendar year.

3 B. In December 2003 and in each December
4 thereafter, the public employees retirement association, with
5 the assistance of the legislative council service, shall
6 determine the amount of those retirement benefits for the
7 succeeding calendar year. If the monthly average exceeds two
8 hundred thousand dollars (\$200,000), the association shall
9 notify immediately the department of the average amount. That
10 average amount shall be the amount distributed pursuant to
11 Subsection A of this section as of the end of each month of the
12 twelve consecutive months beginning with the December in which
13 the determination was made. "

14 Section 2. Section 7-2A-9.1 NMSA 1978 (being Laws 1986,
15 Chapter 5, Section 1, as amended) is amended to read:

16 "7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--
17 PENALTY--EXEMPTION.--

18 A. Every taxpayer shall pay estimated corporate
19 income tax to the state of New Mexico during its taxable year
20 if its tax after applicable credits for such taxable year can
21 reasonably be expected to be five thousand dollars (\$5,000) or
22 more. A taxpayer to which this section applies shall calculate
23 estimated tax by one of the following methods:

24 (1) estimating the amount of tax due, net of
25 any credits, for the current taxable year, provided that the

1 estimated amount is at least eighty percent of the amount
 2 determined to be due for the taxable year;

3 (2) using as the estimate an amount equal to
 4 one hundred percent of the tax due for the previous taxable
 5 year, if the previous taxable year was a full twelve-month year
 6 and if the amount due for that previous taxable year was at
 7 least five thousand dollars (\$5,000); or

8 (3) using as the estimate an amount equal to
 9 one hundred ten percent of the tax due for the taxable year
 10 immediately preceding the previous taxable year, if the taxable
 11 year immediately preceding the previous taxable year was a full
 12 twelve-month year, the amount due for the taxable year
 13 immediately preceding the previous taxable year was at least
 14 five thousand dollars (\$5,000) and the return for the previous
 15 taxable year has not been filed and the extended due date for
 16 filing that return has not occurred at the time the first
 17 installment is due for the taxable year.

18 B. If Subsection A of this section applies, the
 19 amount of estimated tax shall be paid in installments as
 20 follows: twenty-five percent of the estimated tax is due on or
 21 before the fifteenth day of the fourth month of the taxable
 22 year, another twenty-five percent is due on or before the
 23 fifteenth day of the sixth month of the taxable year, another
 24 twenty-five percent is due on or before the fifteenth day of
 25 the ninth month of the taxable year and the final twenty-five

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1 percent is due on or before the fifteenth day of the twelfth
2 month of the taxable year. Application of this subsection to a
3 taxable year that is a fractional part of a year shall be
4 determined by regulation of the secretary.

5 C. Every taxpayer to which Subsection A of this
6 section applies that fails to pay the estimated tax when due or
7 that makes estimated tax payments during the taxable year that
8 are less than the lesser of eighty percent of the income tax
9 imposed on the taxpayer under the Corporate Income and
10 Franchise Tax Act or the amount required by Paragraph (2) or
11 (3) of Subsection A of this section shall be subject to the
12 interest and penalty provisions of Sections 7-1-67 and 7-1-69
13 NMSA 1978 on the underpayment.

14 D. For purposes of this section, the amount of
15 underpayment shall be the excess of the amount of the
16 installment that would be required to be paid if the estimated
17 tax were equal to eighty percent of the tax shown on the return
18 for the taxable year or the amount required by Paragraph (2) or
19 (3) of Subsection A of this section or, if no return was filed,
20 eighty percent of the tax for the taxable year for which the
21 estimated tax is due less the amount, if any, of the
22 installment paid on or before the last date prescribed for
23 payment.

24 E. For purposes of this section, the period of
25 underpayment shall run from the date the installment was

1 required to be paid to whichever of the following dates is
 2 earlier:

3 (1) the fifteenth day of the third month
 4 following the end of the taxable year; or

5 (2) with respect to any portion of the
 6 underpayment, the date on which such portion is paid. For the
 7 purposes of this paragraph, a payment of estimated tax on any
 8 installment date shall be applied as a payment of any previous
 9 underpayment only to the extent such payment exceeds the amount
 10 of the installment determined under Subsection D of this
 11 section due on such installment date.

12 F. For the purposes of this section, the amount of
 13 tax deducted and withheld with respect to a taxpayer by a
 14 remitter under the Oil and Gas Proceeds Withholding Tax Act
 15 shall be deemed a payment of estimated tax. An equal amount of
 16 the amount of withheld tax shall be deemed paid on each due
 17 date for the applicable taxable year unless the taxpayer
 18 establishes the dates on which all amounts were actually
 19 withheld, in which case the amounts withheld shall be deemed
 20 payments of estimated tax on the dates on which the amounts
 21 were actually withheld."

22 Section 3. Section 7-3-12 NMSA 1978 (being Laws 1999,
 23 Chapter 14, Section 3, as amended) is amended to read:

24 "7-3-12. INFORMATION RETURN REQUIRED FROM PASS-THROUGH
 25 ENTITY-- WITHHOLDING. --

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1 A. A pass-through entity doing business in this
2 state shall file an annual information return with the
3 department on or before the due date of the entity's federal
4 return for the taxable year. The information return shall be
5 signed by the business manager or one of the owners of the
6 pass-through entity.

7 B. The information return required by this section
8 shall contain all information required by the department,
9 including:

10 (1) the pass-through entity's gross income;

11 (2) the pass-through entity's net income;

12 (3) the amount of each owner's share of the
13 pass-through entity's net income; and

14 (4) the name, address and tax identification
15 number of each owner entitled to a share of net income.

16 C. A pass-through entity shall provide to each of
17 its owners sufficient information to enable the owner to comply
18 with the provisions of the Income Tax Act and the Corporate
19 Income and Franchise Tax Act with respect to the owner's share
20 of net income.

21 D. The pass-through entity shall deduct and
22 withhold from each nonresident owner's share of net income an
23 amount equal to the owner's share of net income multiplied by a
24 rate set by department regulation. In the case of an owner
25 [~~who~~] that is an individual or entity not taxed as a

1 corporation for federal income tax purposes for the taxable
 2 year, the rate shall not exceed the rate for composite returns.
 3 In the case of an owner that is a corporation or other entity
 4 taxed as a corporation for the taxable year, the rate shall not
 5 exceed the maximum rate for corporate income tax.

6 E. The provisions of Subsection D of this section
 7 shall not apply with regard to:

8 (1) the share of net income of a nonresident
 9 owner ~~[who]~~ that has executed an agreement in accordance with
 10 regulations or instructions of the department that the owner
 11 will report and pay tax, if required, on its own return
 12 pursuant to the Income Tax Act or the Corporate Income and
 13 Franchise Tax Act; or

14 (2) oil and gas proceeds subject to the Oil
 15 and Gas Proceeds Withholding Tax Act.

16 F. Amounts deducted from the owner's share of net
 17 income under the provisions of this section shall be a
 18 collected tax. No owner shall have a right of action against
 19 the pass-through entity for any amount deducted and withheld
 20 from the owner's share of net income."

21 Section 4. A new Section 7-3A-1 NMSA 1978 is enacted to
 22 read:

23 "7-3A-1. [NEW MATERIAL] SHORT TITLE. -- Chapter 7, Article
 24 3A NMSA 1978 may be referred to as the "Oil and Gas Proceeds
 25 Withholding Tax Act". "

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1 Section 5. A new Section 7-3A-2 NMSA 1978 is enacted to
2 read:

3 "7-3A-2. [NEW MATERIAL] DEFINITIONS. --As used in the Oil
4 and Gas Proceeds Withholding Tax Act:

5 A. "department" means the taxation and revenue
6 department, the secretary of taxation and revenue or any
7 employee of the department exercising authority lawfully
8 delegated to that employee by the secretary;

9 B. "oil and gas" means crude oil, natural gas,
10 liquid hydrocarbons or any combination thereof, or carbon
11 dioxide;

12 C. "oil and gas proceeds" means any amount derived
13 from oil and gas production from any well located in New Mexico
14 and payable as royalty interest, overriding royalty interest,
15 production payment interest, working interest or any other
16 obligation expressed as a right to a specified interest in the
17 cash proceeds received from the sale of oil and gas production
18 or in the cash value of that production, subject to all taxes
19 withheld therefrom pursuant to law; "oil and gas proceeds"
20 excludes "net profits interest" and other types of interest the
21 extent of which cannot be determined with reference to a
22 specified share of the oil and gas production;

23 D. "person" means an individual, club, company,
24 cooperative association, corporation, estate, firm, joint
25 venture, partnership, receiver, syndicate, trust or other

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1 association and, to the extent permitted by law, a federal,
2 state or other governmental unit or subdivision or an agency, a
3 department or an instrumentality thereof;

4 E. "remittee" means a person that is entitled to
5 payment of oil and gas proceeds by a remitter; and

6 F. "remitter" means a person that pays oil and gas
7 proceeds to any remittee."

8 Section 6. A new Section 7-3A-3 NMSA 1978 is enacted to
9 read:

10 "7-3A-3. [NEW MATERIAL] WITHHOLDING FROM OIL AND GAS
11 PROCEEDS. --

12 A. Except as otherwise provided in this section, a
13 remitter shall deduct and withhold from each payment of oil and
14 gas proceeds being made to a remittee an amount equal to the
15 rate specified in Subsection C of this section multiplied by
16 the gross amount that otherwise would have been payable to the
17 remittee.

18 B. The obligation to deduct and withhold from
19 payments as provided in Subsection A of this section does not
20 apply to payments that are made to:

- 21 (1) individuals who are residents of New
- 22 Mexico;
- 23 (2) the United States, this state or any
- 24 agency, instrumentality or political subdivision of either;
- 25 (3) any federally recognized Indian nation,

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1 tribe or pueblo or any agency, instrumentality or political
2 subdivision thereof; or

3 (4) organizations that have been granted
4 exemption from the federal income tax by the United States
5 commissioner of internal revenue as organizations described in
6 Section 501(c)(3) of the United States Internal Revenue Code of
7 1986, as amended.

8 C. The rate of withholding is six and three-fourths
9 percent for the period October 1, 2003 through December 31,
10 2004. Thereafter the rate shall be set by department
11 regulation; provided that the rate may not exceed the higher of
12 the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the
13 taxable year or the maximum bracket rate set by Section 7-2A-5
14 NMSA 1978 for the taxable year; and provided further that
15 remitters shall be given ninety days' notice of a change in the
16 rate.

17 D. If the amount to be withheld from a payment to a
18 remittee is less than ten dollars (\$10.00), no withholding is
19 required. "

20 Section 7. A new Section 7-3A-4 NMSA 1978 is enacted to
21 read:

22 "7-3A-4. [NEW MATERIAL] DEDUCTIONS CONSIDERED
23 TAXES.--Amounts deducted under the provisions of the Oil and
24 Gas Proceeds Withholding Tax Act are a collected tax. A
25 remittee who receives payment of oil and gas proceeds does not

1 have a right of action against the remitter for the amount
2 deducted and withheld from the oil and gas proceeds. "

3 Section 8. A new Section 7-3A-5 NMSA 1978 is enacted to
4 read:

5 "7-3A-5. [NEW MATERIAL] REMITTER LIABLE FOR AMOUNTS
6 DEDUCTED AND WITHHELD--EXCEPTIONS.--Every remitter is liable
7 for amounts required to be deducted and withheld by the Oil and
8 Gas Proceeds Withholding Tax Act regardless of whether the
9 amounts were in fact deducted and withheld, except that:

10 A. if the remitter fails to deduct and withhold the
11 required amounts and if the tax against which the required
12 amounts would have been credited is paid, the remitter shall
13 not be liable for those amounts not deducted and withheld; or

14 B. if the remitter's failure to deduct and withhold
15 the required amounts is due to reasonable cause, such as
16 reliance on addresses supplied by remittees, the remitter shall
17 not be liable for amounts not deducted and withheld. "

18 Section 9. A new Section 7-3A-6 NMSA 1978 is enacted to
19 read:

20 "7-3A-6. [NEW MATERIAL] DATE PAYMENT DUE--FORM--
21 ELECTRONIC FILING.--

22 A. Amounts withheld under the provisions of the Oil
23 and Gas Proceeds Withholding Tax Act are due on or before the
24 twenty-fifth day of the month following the end of the calendar
25 quarter when the taxes were required to be withheld.

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1 B. The amount withheld shall be remitted on a form
2 and in a manner required by the department, provided that
3 amounts withheld and remitted from oil and gas proceeds are
4 kept distinct from every other tax or withheld amount. "

5 Section 10. A new Section 7-3A-7 NMSA 1978 is enacted to
6 read:

7 "7-3A-7. [NEW MATERIAL] STATEMENTS OF WITHHOLDING. --

8 A. Every remitter shall file an annual statement of
9 withholding for each remittee. This statement shall be in a
10 form prescribed by the department and shall be filed with the
11 department on or before the last day of February of the year
12 following that for which the statement is made. It shall
13 include the total oil and gas proceeds paid to the remittee and
14 the total amount of tax withheld for the calendar year.

15 B. A copy of the annual statement of withholding
16 shall be furnished to the remittee by the remitter on or before
17 February 15 of the year following the year for which the
18 statement is made. "

19 Section 11. A new Section 7-3A-8 NMSA 1978 is enacted to
20 read:

21 "7-3A-8. [NEW MATERIAL] WITHHELD AMOUNTS CREDITED AGAINST
22 INCOME TAX. --The entire amount of oil and gas proceeds upon
23 which the tax was deducted and withheld shall be included in
24 the base income of the remittee for purposes of the Income Tax
25 Act and the Corporate Income and Franchise Tax Act. The amount

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1 of tax deducted and withheld pursuant to the Oil and Gas
2 Proceeds Withholding Tax Act during the taxable year shall be
3 credited against any income tax or corporate income tax due
4 from the remittee. "

5 Section 12. A new Section 7-3A-9 NMSA 1978 is enacted to
6 read:

7 "7-3A-9. [NEW MATERIAL] INTERPRETATION OF ACT--
8 ADMINISTRATION AND ENFORCEMENT OF ACT. --

9 A. The department shall interpret the provisions of
10 the Oil and Gas Proceeds Withholding Tax Act.

11 B. The department shall administer and enforce the
12 Oil and Gas Proceeds Withholding Tax Act, and the Tax
13 Administration Act applies to the administration and
14 enforcement of the Oil and Gas Proceeds Withholding Tax Act. "

15 Section 13. APPLICABILITY. --The provisions of Section 1
16 of this act apply to distributions as of November 30, 2003 and
17 thereafter.

18 Section 14. EFFECTIVE DATES. --

19 A. Except as provided in Subsection B of this
20 section, the effective date of the provisions of Sections 2
21 through 12 of this act is October 1, 2003.

22 B. This act is contingent upon the enactment into
23 law of Senate Bill 620 or a substantially similar bill of the
24 first session of the forty-sixth legislature. If no such bill
25 is enacted into law, the provisions of this act shall not

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